ATTORNEY-GENERAL

v.

TAY YONG KWANG

COURT OF APPEAL, SINGAPORE
T KULASEKARAM J
TS SINNATHURAY J
LP THEAN J
[CIVIL APPEAL NO. 22 OF 1983]
30 APRIL 1984

LEGAL PROFESSION: *Admission of advocate and solicitor - Requirements - Served under two masters - Period of pupillage - Concurrently attended post-graduate course - Whether it affected the period of pupillage - Meaning of "attend" - Determination of the true construction of s. 11(5) of the Legal Profession Act.*

The respondent is a qualified person within the meaning of s. 2 of the Legal Profession Act. He served his period of pupillage under two masters. The first period of pupillage was from 13 April 1981 to 15 July 1981 under a practising advocate and solicitor, and the second period was for not less than 18 months commencing from 3 August 1981, under a Senior District Judge. During the first period of pupillage i.e. from 13 April 1981 to 30 June 1981 the respondent had also attended and completed instruction, prescribed by the Board of Legal Education.

The respondent by an Originating Summons No. 290 of 1983 (See [1983] CLJ (Rep) 1025) applied for determination of the true construction and meaning of s. 11(5) of the Legal Profession Act, whether it means that:

(a) where a pupil reads in the chambers of his master during the normal office hours of 9.00 a.m. to 5.00 p.m. on a week day, and time is spent in attendance at a course of instruction (prescribed by the Board of Legal Education) outside the said normal office hours, that day shall not be counted for the purpose of s. 11(2) of the said Act;

(b) where a pupil reads in the chambers of his master during the normal office hours of 9.00 a.m. to 1.00 p.m. on a Saturday, and the course of instruction is not conducted on a Saturday or is not conducted during the said normal office hours on a Saturday, that day shall not be counted for the purpose of s. 11(2) of the said Act.

The question was whether the period of pupillage from 13 April 1981 to 30 June 1981, during which period the respondent had also attended the course, can be counted as the period of pupillage for the purpose of s. 11(2) of the Legal Profession Act.

The learned Chief Justice answered the prayers for (a) and (b) in the negative and declared that the respondent has, for the period of April 13, 1981 to July 15, 1981 completed three months of pupillage.

This is an appeal by the Attorney-General against the decision of Wee Chong Jin in CJ. The issues raised here are the same as those raised in the O.S. No. 290 of 1983.

Held:

[1] The post-graduate course, attended by the respondent should be treated as a distinct and exclusive phase of legal education, separate from the period of attendance at the office of a practising advocate and solicitor or the period of pupillage with a master. The period, in

which the pupil concurrently attended the post-graduate practical course, should be excluded from the prescribed period of attendance at the office of a practising advocate and solicitor or the prescribed period of pupillage.

[2] Questions in para. (a) and (b) of the O.S. No. 290 of 1983 were determined in the affirmative.

[Appeal allowed. No costs.]

Legislation referred to:
Legal Profession Act [Sing], ss. 2, 10(1), 11(2), (3), (5), 12.

For the appellant - Chao Hick Tin
For the respondent - Tommy Neo

JUDGMENT

LP Thean J:

This appeal by the Attorney-General and two other appeals, Civil Appeals Nos. 28 and 27 of 1983 by The Law Society of Singapore and the Board of Legal Education respectively, arose out of the same proceedings, originating summons No. 290 of 1983; they raise the same issues and were accordingly heard together. The originating summons was taken out by the respondent, Tay Yong Kwang, as the plaintiff in which were joined the Attorney-General, The Law Society of Singapore and the Board of Legal Education as the defendants. In the summons the respondent applied for a determination of the following questions, namely; whether on a true construction of s. 11(5) of the Legal Profession Act (Cap.217) and in the events that have occurred the said subsection means that:

(a) where a pupil reads in the chambers of his master during the normal office hours of 9.00 a.m. to 5.00 p.m. on a weekday, and time is spent in attendance at a course of instruction (prescribed by the Board of Legal Education) outside the said normal office hours, that day shall not be counted for the purpose of s. 11(2) of the said Act;

(b) where a pupil reads in the chambers of his master during the normal office hours of 9.00 a.m. to 1.00 p.m. of a Saturday, and the course of instruction is not conducted on a Saturday or is not conducted during the said normal office hours on a Saturday, that day shall not be counted for the purpose of s. 11(2) of the said Act;

and if the answers to the above questions are in the negative, the respondent also asked for the necessary declaration that he has, for the period from 13 April 1981 to 15 July 1981, completed three months of the period of pupillage for the purpose of s. 11(2)(a) of the Legal Profession Act. The Originating Summons was heard by the learned Chief Justice, who answered both the questions in the negative and made the declaration accordingly. Against that judgment, all the three defendants, the Attorney-General, The Law Society of Singapore and the Board of Legal Education severally appealed.

The respondent is a qualified person within the meaning of s. 2 of the Legal Profession Act (Cap. 217) (hereinafter referred to as "the Act"). During the period from 13 April 1981 to 15 July 1981 he served a period of pupillage with Mr. Sachi Saurajen of M/s. Drew & Napier, a practising advocate and solicitor who satisfies the requirements under s. 12(1)(a) of the Act. Thereafter, with the approval of the Board of Legal Education (hereinafter referred to as "the Board"), he served a further period of pupillage of not less than 18 months commencing from 3 August 1981 with Mr. Michael Khoo Kah Lip, Senior District Judge, who satisfies the requirements under s. 12(1)(b) of the Act. Of this latter period, each period of six months by virtue of s. 12(2) of the Act counts as one month's period of pupillage with a practising advocate and solicitor.

During the period from 13 April 1981 to 30 June 1981 the respondent also attended and successfully completed a course of instruction prescribed by the Board. The lessons or classes for the course were conducted during the late afternoon commencing at 5.00 p.m. and in the evening from Monday to Friday each week, except on two occasions on 27 May and 3 June 1981 when the lessons or classes were held from 9.00 a.m. to 10.00 a.m. respectively. This period covered by the course fell within his first period of pupillage which he served with Mr. Sachi Saurajen, and the question which arises is whether the period of pupillage from 13 April 1981 to 30 June 1981, excepting the two days of 27 May and 3 June 1981, can be counted as the period of pupillage for the purpose of s. 11(2) of the Act.

In order to determine this question, it is necessary to examine the positions prevailing:

(a) at the time immediately before 15 July 1966 when the amendment to s. 5(3)(b) of the Advocates and Solicitors Ordinance introduced by the Advocates and Solicitors (Amendment) Act, 1966 came into force, and

(b) at the time immediately before 11 February 1967 when the Advocates and Solicitors Ordinance was repealed by the Legal Profession Act.

At the time immediately before 15 July 1966 under s. 5(3) of the Advocates and Solicitors Ordinance (hereinafter referred to as "the Ordinance"), a qualified person such as the respondent who had passed the final examination for the degree of Bachelor of Laws in the University of Singapore would be required to attend and receive instruction in law in the office in Singapore of a practising advocate and solicitor of not less than seven years' standing in Singapore for a period of not less than twelve months. Where, however, a qualified person is a barrister of England or Northern Ireland or a member of the Faculty of Advocates in Scotland and had satisfactorily completed the Post-Final Practical Course organised by the Council of Legal Education in London or had been a pupil of or read in the chambers of a practising barrister or of a member of the Faculty of Advocates of more than seven years' standing for a period of six months or more, the period of attendance and receiving instruction in law in the office in Singapore of a practising advocate and solicitor would be not less than six months, and if such qualified person had only been such a pupil or read in such chambers for a period of less than six months then that period would be counted and added to his period of attendance and receiving instruction in law in the office in Singapore of an advocate and solicitor to make up the requisite period of twelve months.

The Ordinance then clearly envisaged separate and exclusive phases of legal education of an advocate and solicitor taking place successively. First, he must obtain his qualification to become a qualified person. Secondly, if such qualified person is a barrister of England or Northern Ireland or a member of the Faculty of Advocates in Scotland he may attend and complete the Post-Final Practical Course in London or may serve as a pupil or read in the chambers of a practising barrister or of a member of the Faculty of Advocates of more than seven years' standing, and completion of such Post-Final Practical Course or such period of pupillage or reading in chambers would be counted for the purpose as provided in s. 5(3)(a) of the Ordinance. Thirdly, he must attend and receive instruction in law in the office in Singapore of a practising advocate and solicitor of not less than seven years' standing in Singapore for the requisite period as prescribed in s. 5(3) of the Ordinance. In no way would it be feasible or practicable for-

(a) attendance at and completion of Post-Final Practical Course or reading in chambers of a practising barrister or member of the Faculty of Advocates, and

(b) attendance and receiving instruction in law in the office in Singapore of a practising advocate and solicitor.

taking place concurrently or contemporaneously.

In 1966 an amendment to s. 5(3)(b) of the Ordinance was introduced by the Advocates and Solicitors (Amendment) Act 1966 and the amendment came into effect on 15 July 1966. As amended, the said s. 5(3)(b) provides that if a petitioner (for admission to the roll of advocates and solicitors) has obtained a certificate from the University of Singapore or the University of Malaya that he had satisfactorily completed a post-graduate practical course organised by the University, he would be required to attend and receive instruction in law in the office in Singapore of a practising advocate and solicitor of not lees than seven years' standing in Singapore for a period of not less than six months, subject, however, to a proviso that "no period of attendance" in such office shall be counted for the purpose of s. 5(3)(b), "if the petitioner has concurrently attended the post-graduate practical course." The meaning of this proviso is abundantly clear: it is to treat the post-graduate practical course as a separate and exclusive phase of legal education and to eliminate any feasibility of a qualified person attending such a course and also attending and receiving instruction in law at the office of an advocate and solicitor concurrently. Such then were the requirements under s. 5(3)(b) of the Ordinance prevailing at the time immediately before its repeal.

The Legal Profession Act was passed on 31 December 1966. Sections 1, 2, 141, 146 and 147 of the Act came into force on 9 January 1967 and the remaining sections thereof came into force on 11 February 1967 and the Ordinance was repealed. Section 10(1) of the Act sets out the requirements which, subject to s. 13, must be fulfilled by a qualified person before he can be admitted as an advocate and solicitor, and these requirements are, *inter alia*, the following:

(a) that he has satisfactorily served the prescribed period of pupillage for qualified persons;

(b) that he has attended such courses of instructions as may be prescribed by the Board; and

(c) that he has passed such examinations as may be prescribed by the Board.

Section 10(2) gives to the Board a discretion to exempt a qualified person from attending such courses of instruction and passing such examinations. Section 11 prescribes the period of pupillage and it will be helpful to set out verbatim the whole of this section:

11.(1) For the purposes of this part, a qualified person shall during his period of pupillage be known as a pupil and a person with whom a pupil serves his period of pupillage or any part thereof shall be known as a master.

(2) Subject to this section and s. 12 the prescribed period of pupillage shall be-

(a) six months where the master satisfies the requirements of para. (a) of sub-section (1) of s. 12; and

(b) three years where the master satisfies the requirements of para. (b) of sub-section (1) of s. 12.

(3) A pupil shall before his petition is heard attend and satisfactorily complete a course of instruction organised or recognised by the Board for the purposes of this section unless exempted therefrom under sub-section (2) of s. 10.

(4) No person shall without the special leave in writing of the Board hold any office or engage in any employment of whatsoever kind and whether full-time or part-time during his period of pupillage:

Provided that this subsection shall not apply to a legal officer:

And provided further that this subsection shall not preclude a pupil receiving remuneration from his master.

(5) Where a pupil attends the course of instruction referred to in subsection (3) concurrently with his period of pupillage, the period spent in attendance at such course of instruction shall not be counted for the purpose of subsection (2).

Two points clearly emerge from the requirements of s. 11. First, what is required by subsection (2) thereof is "a prescribed period of pupillage", which is six months where the master satisfies the requirements of s. 12(1)(a) and three years where the master satisfies the requirements of s. 12 (1)(b). Under s. 12(3) a qualified person may with the approval of the Board serve different parts of his period of pupillage with different masters. Secondly, a period of pupillage, just like any other period of time, whether it be one month, six months, three years or any other length of time, commences from a certain specific date and ends on a specific date.

With these considerations in mind, we now proceed to consider s. 11(5) of the Act. This subsection has two limbs: the first sets out a contingency or event which must occur before the second limb, which lays down the legal consequence flowing from that contingency or event, becomes applicable. In this case, the respondent during the period from 13 April 1981 to 30 June 1981 attended a course of instruction prescribed by the Board and during the period from 13 April 1981 to 15 July 1981 served a period of pupillage with Mr. Sachi Saurajen. In those circumstances, did the contingency or event as set out in s. 11(5) of the Act occur with reference to the respondent? He did attend a course of instruction; that course of instruction commenced on 13 April and terminated on 30 June 1981, and that period fell within his period of pupillage with Mr. Saurajen. Did he not therefore attend the course of instruction "concurrently with his period of pupillage"? On this analysis the answer is inescapably in the affirmative. It is significant that the first limb of s. 11(5) does not say: "where a pupil attended the course of instruction referred to in subsection (3) concurrently with the attendance at the office of his master." What it does say is slightly but appreciably different, which is: "Where a pupil attends the course of instruction referred to in subsection (3) concurrently with his period of pupillage." In other words, the event set out in the first limb of s. 11(5) is not one where a pupil attends the course of instruction concurrently with his attendance at the office of his master, but where a pupil attends the course of instruction concurrently with his period of pupillage: attendance at the course taking place at the same time as or simultaneously with the period of pupillage. That precisely is the event which has occurred in the case of the respondent. The contingency or event set out in the first limb of s. 11(5) having occurred, the second limb thereof becomes applicable, and the next question is how is the second limb to be applied to the respondent in computing his period of pupillage. The second limb provides that "the period spent in attendance at such course of instruction shall not be counted for the purpose of subsection (2)" of s. 11. The extent of the application of this limb therefore depends on the meaning of the phrase "the period spent in attendance" at the course of instruction, and it is this phrase that gives rise to difficulty.

On a strict interpretation the period spent in attendance can be construed to mean only the times the pupil physically spent in attending lessons or classes for the course. If this is the meaning of the phrase, then in applying the second limb of s. 11(5) it is necessary to count the actual hours and minutes of a pupil's attendances at the course of instruction, aggregate them and convert the total of all such hours and minutes into days and thereafter subtract these days from the period of pupillage. Such a construction is not very meaningful and cannot be intended by the legislature, having regard to the positions prevailing prior to the

coming into force of the Act which we have discussed earlier. In our opinion, a broader meaning must be given to the phrase, "the period spent in attendance at such a course of instruction," and in the context of s. 11(5) it means the period of time spanning the course from beginning to end in which the pupil is engaged, treating the course of instruction as a course of legal education.

Mr. Neo on behalf of the respondent drew our attention to the word "attend" appearing in s. 6(3) of the Act, which in his submission admits of only one meaning, i.e., "physical or personal attendance" and consequently following the general rule of construction, the same word appearing in s. 11(5) should receive the same meaning, unless the context otherwise requires. We agree with Mr. Neo that the word "attend" in s. 6(3) has that and only that meaning, but in s. 11(5), in the context of that subsection, the word "attendance" must admit of a broader meaning than just mere physical attendance.

There is no doubt in our mind that s. 11(5) of the Act is the successor of the proviso to para. (b) of s. 5(3) of the Ordinance. Like s. 11(5) of the Act, the proviso to para. (b) of s. 5(3) of the Ordinance has also two limbs but in the inverse order: the first limb sets out a prohibition, which is: no period of attendance in the office in Singapore of an advocate and solicitor shall be counted for the purpose of the said para. (b), and the second limb sets out a contingency or event, which is: if the petitioner has concurrently attended the post-graduate practical course. Mr. Neo argued that the wording in the proviso to para. (b) of s. 5(3) of the Ordinance was different from that of s. 11(5) of the Act. In his submission the proviso is most clear, and "no period of attendance in the office in Singapore of an advocate and solicitor was to be counted if the petitioner has concurrently attended the post-graduate practical course." This clear wording, however, was, according to him, amended to that appearing in s. 11(5) of the Act and the reason for the amendment is that the legislature had intended, where the period of the pupillage and the period of the course run concurrently, to exclude "the period spent in attendance at such course" and "not the whole period of pupillage at the office of the master as in s. 5(3)(b) of the Ordinance." With respect we are unable to accept such an argument. In our opinion the change in wording in s. 11(5) of the Act is not due to any change in the intention of the legislature. Like the proviso to para. (b) of s. 5(3) of the Ordinance, s. 11(5) of the Act regulates the computation of a period prescribed in the preceding provision, namely: Section 11(2). It is true that the text of s. 11(5) of the Act is different from that of the proviso to para. (b) of s. (5)(3) of the Ordinance; but this difference arises consequently from the difference in wording of their respective preceding provisions. The preceding provisions of s. 11 (5), i.e., ss. 10 and 11(2) of the Act, have been drafted in a form different from that of s. 5(3) of the Ordinance. Section 5(3) of the Ordinance provides that before an order is made by the Court, every petitioner, other than a solicitor entitled to practise in the Court in any part of Malaysia, "shall have attended and received instruction in law in the office in Singapore of a practising advocate and solicitor of not less than seven years' standing in Singapore" for the requisite period of time as therein provided. Section 10 of the Act, however, provides that, subject to s. 13, no qualified person shall be admitted as an advocate and solicitor unless, among other things, he "has satisfactorily served the prescribed period of pupillage for qualified persons" and the prescribed period of pupillage is provided in s. 11(2) of the Act. From such difference in wording must ensue a difference in wording between the proviso to s. 5(3)(b) of the Ordinance and s. 11(5) of the Act. In principle, both s. 5(3) of the Ordinance and ss. 10 and 11 of the Act, though couched in different forms, provide for the same point: the requirements to be satisfied for admission of a person as an advocate and solicitor of the Supreme Court. The words may be different but the intention is clear. Equally clear in particular are the proviso to s. 5(3)(b) of the Ordinance

and s. 11(5) of the Act. Both are intended to treat the post-graduate course as a distinct and exclusive phase of legal education, separate from the period of attendance at the office of a practising advocate and solicitor or the period of pupillage with a master, and to exclude from the prescribed period of attendance at the office of a practising advocate and solicitor or the prescribed period of pupillage the period in which the pupil concurrently attended the post-graduate practical course.

For the reasons we have given we reluctantly disagree with the learned Chief Justice and are compelled to come to the conclusion that the appeal must be allowed. Accordingly, we set aside the order made by the learned Chief Justice and determine the questions in para. (a) and (b) of the Originating Summons No. 290 of 1983 in the affirmative. In the circumstances of this case, we are of the opinion that there should be no order as to costs. The deposit paid by way of security for the respondent's costs of this appeal is to be refunded to the appellant. We make similar orders in the other two appeals, Civil Appeals Nos. 27 and 28 of 1983.

Also found at [1984] 1 CLJ 398